

POLICE/SHERIFF'S DEPARTMENT	RULES AND REGULATIONS
SUBJECT: Grievances	NUMBER: 1-10
EFFECTIVE DATE: July 1, 1999	REVIEW DATE:
AMENDS/SUPERSEDES: RR 1-10, January 1988	APPROVED: _____ Chief of Police/Sheriff
CALEA STANDARDS: 25.1	VLEPSC STANDARDS: PER.08.01-.04

NOTE

This order is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third-party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

INDEX WORDS

Grievance
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I. POLICY

The department's goal is to provide fair, equitable, and clearly defined means for the resolution of grievances, to ensure employees and their supervisors are accorded reasonable opportunity to present the facts bearing on a grievance, and to guarantee the opportunity to exercise the rights set forth in this order. Every employee has the right to fair treatment in all matters arising from employment and to this end each employee has the right to be heard whenever he or she alleges mistreatment. A grievance process that affords employees the opportunity to air a complaint helps reduce dissatisfaction, identify organizational problems, and increase morale.

II. PURPOSE

The purpose of this order is to establish grievance procedures for departmental employees to resolve disputes or complaints concerning the terms or conditions of employment.

III. APPLICABILITY

A. Included

1. All permanent full-time or part-time employees (those who work at least 20 hours weekly, continuously for at least six months). *[See Virginia Code § 15.2-1507 for an expanded list of included and excluded personnel.]*

B. Excluded

1. Probationary employees.
2. An employee who has voluntarily resigned may not have access to the grievance procedure after the effective date of the resignation. An employee who has been removed shall not have access to the grievance procedure, except to grieve a removal resulting from a formal discipline or unsatisfactory job performance or an involuntary separation (see RR 1-20 for more information on resignations). This grievance must be filed within 30 calendar days of the dismissal date. Any grievance initiated by a permanent employee before voluntary separation from the department may continue to be processed through the grievance procedure.

IV. **WHAT IS GRIEVABLE**

A grievance is a complaint or dispute of an employee relating to employment, including but not necessarily limited to:

- A. Disciplinary actions, including dismissals (whether resulting from formal discipline or unsatisfactory job performance or an involuntary separation), demotions, and suspensions.
- B. The improper application of personnel policies, procedures, rules and regulations, and ordinances and statutes.
- C. Acts of reprisal as a result of use of the grievance procedure or of participation in the grievance of another employee.
- D. Complaints of discrimination on the basis of race, color, creed, political affiliation, age, handicap, national origin, or sex.
- E. Intimidation because of participation or failure to participate in political activities.

V. **WHAT IS NOT GRIEVABLE**

Management reserves the exclusive right to manage the affairs and operations of the department. Accordingly, the following complaints are **not grievable** under this order:

- A. Establishment and revision of wages or salaries, position classifications, or general benefits.

- B. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content. (The measurement and assessment of work through a performance evaluation shall not be grievable except where the employee can show that the evaluation was arbitrary or capricious.)
- C. The contents of established personnel policies, orders, and statutes.
- D. Failure to be promoted (except where the employee can show that established promotional policies or procedures were not followed or applied fairly).
- E. The methods, means, and personnel by which work activities are to be carried on.
- F. Dismissal, layoff, demotion, or suspension from duties because of lack of work, reduction in the work force, or job abolition.
- G. The non-disciplinary hiring, transfer, assignment, and retention of employees within the agency.
- H. The relief of employees from duties during emergencies.
- I. The town's financial, budgetary, accounting, compensation, and organizational policies and procedures.
- J. Oral reprimands, warnings, or written reprimands. See RR 1-9 for related information.
- K. Management of town employees, including the right to determine the duties to be included in a job classification; to make personnel appointments in accordance with adopted selection policies and techniques; to determine the number of persons to be employed or retained as employees, including the right to lay off employees whenever it is deemed to be in the best interest of efficiency or productivity or whenever necessitated by lack of funds or reduced workload; to establish rules and regulations governing work performance and conduct of performance evaluations; to transfer and assign employees within the town; to determine the need for shift operation and rotation of the work week; to assign overtime; to determine job training and career development; and to determine duties or actions in emergencies.

VI. PROCEDURES

[Note: The procedure that follows is very detailed and assumes that the law-enforcement agency has a designated personnel officer and that the town has a personnel director. Sheriffs who set up a grievance procedure are not bound to consult a county personnel director unless they have adopted their county's personnel management system and have articulated a policy which specifically outlines how grievances will be handled and the role of personnel specialists in their resolution. Many grievance procedures are in place

in local jurisdictions. The key components of most grievance procedures include the following:

- a first step that involves an employee addressing a problem to an immediate supervisor, either orally or in writing, with a prescribed time limit;*
- a second step by which the employee, who has not received satisfaction through the first step, addresses the complaint in writing to a higher supervisor or, in smaller agencies, to the chief of police or sheriff;*
- a third step involving either the chief of police or sheriff as the final arbiter, or, in the case of municipalities, the town manager;*
- a final step involving a hearing or panel examination which involves representatives chosen by the employee and the department who render a final, unappealable decision unless the issue is referred to a court.]*

A. Nature of the grievance

An employee's grievance shall include the following:

1. Specifically, factually, and clearly detail the allegation and the harm done.
2. State that the harm arose from an act, commission, or omission that directly affects the employee's working conditions or employment relationship.
3. Define a grievable matter that is within departmental control.
4. State the relief sought that is within the department's power to grant.

B. First management step

1. The employee shall identify the grievance orally to the immediate supervisor in an informal meeting within 30 calendar days after the event or action which is the basis for the grievance. A grievance alleging discrimination or retaliation by the immediate supervisor may be initiated with the next-level supervisor.

[Note: A law-enforcement officer's right to grieve a matter per a procedure established by a local governing body is governed by Virginia Code §§ 15.2-1506 and -1507. The former statute requires every locality that employs at least 15 persons to have a grievance procedure. The latter statute states that localities (with at least 15 employees) without their own grievance procedures shall use the state grievance procedure. Further, the same statute outlines the components that a locality's own procedure must have.]

2. The supervisor shall give an oral response to the employee within five work days following the meeting.
3. If a resolution is not reached at this point, the employee shall submit a memorandum to the supervisor which outlines the information listed under A above within five work days after receipt of the oral response.
4. The supervisor, in turn, shall give the employee a written response within five work days of receipt of the employee's memorandum.
5. Upon proper notification to the supervisor, the grievant (whether or not a grievance has been filed) shall be granted a reasonable period of time away from the work-site for interviews with the town employee relations counselor, with no deductions from annual or compensatory leave balances.

C. Second management step

1. If the employee cannot achieve resolution of the grievance during the first management step, and the status of the complaint as grievable has not been decided, then the employee should ask the supervisor to present the employee's memorandum to the chief of police/sheriff. The grievance must be submitted to the chief/sheriff within five work days following receipt of the supervisor's reply.
2. Upon receipt of the memorandum the chief/sheriff shall meet with the employee, the supervisor, and appropriate witnesses.
3. The chief/sheriff shall give the employee a second-step response in writing within five work days following the date of the meeting.
4. If the employee desires the presence of legal counsel, the chief/sheriff may have legal counsel present as well.
5. The chief/sheriff shall decide whether the issue is grievable within sections IV and V of this order. The matter may be referred to the town employee relations counselor *[if one exists, but in some jurisdictions it may be the town manager]* who is empowered to decide grievability.
 - a. If the issue is not grievable, the employee shall be advised that he or she may appeal to the circuit court. The court's decision is final and not appealable. The department shall assist the employee with the mechanics or procedure of appealing the issue to the court. If so appealed, within five work days of entering the appeal with the court, the chief/sheriff shall transmit to the clerk of the court a copy of the decision by the chief/sheriff, the notice of appeal, and any exhibits.

The court, without a jury, shall hear the appeal within 30 calendar days of the clerk's receipt of such records. The court's decision shall be rendered within 15 calendar days of the conclusion of the hearing.

- b. If the issue is grievable, then a panel hearing shall be convened (see D below).

D. Third management step: panel hearing

1. The chief/sheriff shall select a panel within ten work days of the determination that the issue is grievable.
2. Panel members
 - a. A panel shall consist of three members: one member appointed by the grievant, one member appointed by the agency, and a third member selected by the town manager (or county personnel officer). The third panel member, who shall not be an employee of the agency, shall be the chairperson of the panel.
 - b. To ensure an impartial panel, it shall not be composed of any persons having direct involvement with the grievance being heard, or with the problem giving rise to the grievance; for example, the grievant, the chief of police/sheriff, supervisors, and witnesses who have appeared at any management step. Also, no attorney having direct involvement with the subject matter of the grievance, or a partner, associate, employee, or co-employee of such attorney, shall serve as a panel member.
 - c. Furthermore, the following relatives of a participant in the grievance process shall not serve as panel members: spouse, parent, child, descendant of a child, sibling, niece, nephew and first cousin.
 - d. Panels chosen in compliance with these requirements shall be deemed to be impartial.
3. Panel process
 - a. The parties shall not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members before the hearing. Any matters requiring the attention of the panel should be communicated in writing with copies to all parties.
 - b. The full panel will set the date, the time, and place for the hearing, which shall be held within 10 work days following the selection of the full panel. The panel chairperson shall immediately notify the

grievant and the agency of the hearing date. The panel shall conduct the hearing in the locale where the grievant is employed unless the panel unanimously decides that another location is appropriate.

- c. The grievant and the agency may be represented by legal counsel or other representative of their choice at the panel hearing. This representative may examine, cross-examine, question, or present evidence on behalf of the grievant or the agency before the panel.
- d. The panel will render its decision in a memorandum guided but not necessarily bound by the relief specified by the grievant. The panel shall render its decision and distribute copies to the employees, agency head, and town employee relations counselor within 10 work days of the conclusion of the hearing. The reason for the panel's decision shall be set forth in the memorandum. The majority decision of the panel shall be final and binding, consistent with provisions of law and written policy. The agency head is responsible for assuring that panel decisions are implemented. Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the panel's decision.
- e. If a written request to reconsider the panel decision is submitted by either party within five work days of receipt of the decision, the panel by majority vote may elect to review its decision and/or reopen the hearing for good cause shown.
- f. Any challenge of a panel decision on the grounds of inconsistency with law and written policy shall be submitted by either party within five work days to the town personnel director who is empowered to decide such questions and to direct reconsideration by the panel where appropriate.
- g. Notwithstanding the above, after receipt of the panel decision, the town personnel director may on his/her own action remand to the panel for further consideration a decision which appears to be inconsistent with the law or written policy.
- h. A panel's responsibility is to ensure the proper application of town and agency policies and procedures. Panels do not have the authority to formulate or to change policies or procedures; however, they may consider mitigating circumstances and modify agency action concerning discipline. Panels do not have the authority to consider matters which the grievance procedure makes non-grievable.

- i. A panel by a majority vote may uphold or reverse the action of the agency or in appropriate circumstances, may choose a modified remedy. Panel decisions, however, must be consistent with provisions of law and written policy. Where a panel decision directs reinstatement of an employee, the panel has the authority to award full, partial, or no back pay for the period of separation as determined to be appropriate based on the circumstances of the case. An award of back pay shall be offset by interim earnings the employee received during the period of separation. While in appropriate cases a panel might determine that a grievant is entitled to reinstatement from which back pay and a restoration of benefits might flow, in no case does a panel have authority to award damages or attorney fees.
- j. The grievance procedure is an administrative process designed for the resolution of sensitive personnel matters, and the panel hearing is the concluding step of the administrative process. Therefore, to protect the privacy of the parties and other employees, it is recommended that the persons present at the panel hearing be limited to the grievant, the panel members, the legal counsel or other representatives of the grievant and the agency, appropriate witnesses, and official recorders. The panel, however, has the specific and final authority to determine the propriety of attendance at the hearing of all persons not having a direct involvement in the hearing. At the request of the grievant, the hearing shall be private. While at the panel's discretion the agency personnel officer may be present in some hearings and may be called upon as a witness, he or she shall not be present or advise the panel during its private sessions and deliberations. When necessary, the panel may direct grievance procedure questions to the town personnel director.
- k. Evidence or facts shall be submitted at the hearing in the presence of the parties. Panel hearings are not meant to be conducted as full court proceedings, and panels shall not be bound by the technical rules of evidence. Panels, however, should take into account all reliable and substantial evidence produced at the hearing.
- l. At the option of each party, opening statements may be made at the beginning of the hearing; and the panel may ask for such statements in order to clarify the issues involved in the grievance.
- m. The agency and thereafter the grievant, or their representatives, shall then present their claims, proofs, and witnesses who shall submit to questions or other examination. The panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.

- n. The panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing.
- o. Witnesses other than the parties should remain in the hearing room only while giving their testimony.
- p. Members of the panel may question anyone giving their testimony.
- q. Exhibits offered by the grievant or the agency may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.
- r. The parties shall produce additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall judge the relevancy and materiality of the evidence offered. Evidence is to be taken in the presence of the panel and both parties.
- s. After both parties have had the opportunity to present their evidence, the panel chairperson shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing shall be declared closed.
- t. The panel shall render its decision within 10 work days of the conclusion of the hearing. The facts found and the reasons for the panel's decision must be set forth in a memorandum. Panels are to decide cases on the merits, not on compliance matters occurring before or during panel hearings.
- u. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure without just cause will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of the notification. This written notification by the grievant shall be made to the agency head. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party. The town personnel manager is authorized to make a final and non-appealable ruling on all compliance issues.
- v. An award of a decision to either party for procedural noncompliance may be made only after a ruling by the town personnel manager that

the issue is grievable and only after completion of any subsequent appeals of such ruling. Moreover, the relief provided must be reviewed by the town personnel manager and found to be consistent with provisions of law and written policy.

- w. The time periods outlined herein constitute substantial procedural requirements. However, these time periods may be extended by mutual agreement between the grievant and the appropriate agency supervisor or manager to whom the time period is applicable. The panel may, with just cause, extend the time periods applicable to the panel.
- x. Non-town employees serving as panel members are not compensated or reimbursed for any expense. Town employees who serve as witnesses or panel members during normal working hours are compensated at their regular rate of pay, and this compensation is not charged against any leave. Employees are also reimbursed for reasonable costs for transportation, meals, and lodging. It is expected that the number of witnesses called will remain within reasonable limits.
- y. Grievants who are still employed by the town are compensated at their regular rate of pay for the time spent during normal working hours in the management step meetings, the panel hearings and other hearings provided in this procedure. This compensation is not charged against any leave, and these employees are also reimbursed for reasonable costs for transportation, meals, and lodging.
- z. Employees who are grieving termination are not compensated except in cases where a panel decision results in reinstatement with back pay. Also, reimbursement for travel expenses for these grievants shall be limited to those incurred from the previous work location to the meeting locations.
- aa. The grievant shall not be responsible for court costs of appeals to the circuit court for determination on whether an issue qualifies for a panel hearing. In employee termination cases, the department of the grievant shall bear the *per diem* expenses and other costs of the administrative hearing officer, if one is deemed necessary by the town personnel director. The grievant is responsible for the cost of legal counsel or other representation in the preparation or presentation of the grievant's case in all or in any part of the proceedings.
- bb. The use of agency or court reporters, as well as mechanical records, shall not be permitted in the management steps. They may be used at

the panel hearing, however, at the discretion of either party. Hearing-disabled employees or employees not fluent in English shall be allowed to have an interpreter during any and all procedural steps.